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Before the
Federal Communications Commission
Washington, D.C. 20554

JUN 27 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	IB Docket No. <u>95-91</u>
)	GEN Docket No. 90-357
)	
Establishment of Rules and Policies for the)	RM No. <u>8610</u>
Digital Audio Radio Satellite Service in the)	PP-24
2310 - 2360 MHz Frequency Band)	PP-86
)	PP-87

**REPLY COMMENTS OF THE
CONSUMER ELECTRONICS MANUFACTURERS ASSOCIATION**

The Consumer Electronics Manufacturers Association ("CEMA"), by its undersigned attorneys, hereby replies to the Comments filed in response to the Further Notice of Proposed Rulemaking ("Further Notice") in the above-captioned proceeding.^{1/}

In its initial comments, CEMA urged the Federal Communications Commission ("FCC" or "Commission") to adopt reasonable and necessary requirements governing the build-out of terrestrial gap-fillers and the overall performance of satellite DARS systems, particularly in urban and mobile environments.^{2/} CEMA cited both its own field tests and the Report of the Communications Research Centre Bureau of Radio Broadcast Technologies Research ("CRC Report") as evidence that, because of the inherent propagation characteristics of the S-Band and its

^{1/} See Establishment of Rules and Policies for Digital Audio Radio Satellite Service in the 23120-2360 MHz Frequency Band, Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, IB Docket No. 95-91, GEN Docket No. 90-357, RM No. 8610, PP-24, PP-86, PP-87 (rel. March 3, 1997) ("Further Notice").

^{2/} Comments of CEMA (filed June 13, 1997).

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relation to digital coding technologies, extensive use of terrestrial gap-fillers will be necessary to enable the delivery of even minimally acceptable satellite DARS service to users in mobile and urban environments. CEMA also argued that, in the absence of specific license requirements, the licensees will avoid assuming the significant economic costs associated with the deployment of a nationwide network of gap-fillers in urban areas. A review of the other comments filed in response to the Further Notice confirms the validity of CEMA's position in this regard.

As an initial matter, both DARS licensees confirm the absolute need for terrestrial repeaters, especially in mobile and urban environments.^{3/} American Mobile Radio Corporation ("AMRC"), for example, notes that "[gap fillers] are especially important in a mobile environment, where without such facilities users would be subjected to an annoying loss of service while they are listening, as the signal level changes."^{4/} Similarly, CD Radio acknowledges that "the use of gap-fillers will further the public interest by ensuring that consumers are not deprived of satellite DARS services in difficult propagation environments."^{5/}

The National Association of Broadcasters ("NAB") accurately notes that the comments of the DARS licensees are extremely vague regarding their plans for gap-filler implementation. NAB further claims that the Commission cannot proceed in this matter due to the lack of an adequate technical record on which to formulate rules governing technical repeaters. However, CEMA believes that sufficient technical evidence has been submitted in this proceeding to demonstrate that

^{3/} Comments of the American Mobile Radio Corporation at 2.

^{4/} *Id.*

^{5/} Comments of CD Radio at 2.

the DARS licensees will need to deploy a vast network of gap-filling transmitters in order to effectively realize the promise of providing a seamless national DARS service. In this regard, CEMA has demonstrated that S-Band DARS systems suffer from unacceptable signal blockage rates and will therefore require the deployment of a substantial number of "gap-fillers" in order to deliver seamless service to urban and mobile listeners.^{6/} CEMA has also submitted the CRC Report, in which an extensively detailed analysis confirms that a significant density of gap-fillers will be necessary to ensure reception in urban environments.^{7/}

Moreover, the comments of the licensees themselves confirm that, in the absence of rules governing terrestrial build-out and performance, the licensees will be unwilling to assume the financial burden of building out the extensive network of gap-fillers necessary to provide the promised seamless, nationwide DARS service. Indeed, CD Radio openly expresses its concern that deploying repeaters will increase its infrastructure costs, and admits that it envisions deploying "only a *relatively limited number* of repeaters . . .".^{8/} CD Radio further explains that it will be willing to incur the "added cost" of repeaters only in those presumably rare instances where, in CD Radio's determination, "the benefits to its customers . . . exceed the costs."^{9/}

^{6/} See *Ex Parte* submission entitled *The Consumer Electronics Manufacturers Association Vision for Digital Audio Radio Services* (January 30, 1997); see also *Ex Parte* filing entitled *Report of the Filed Test Task Group; Field Test Data Presentation* (January 30, 1997).

^{7/} See Report of the Communications Research Centre Bureau for Radio Broadcast Technologies Research, attached as Exhibit 1 to the Comments of the Consumer Electronics Manufacturers Association. As addressed in CEMA's comments, even with the use of terrestrial gap-fillers acceptable coverage cannot be provided to mobile receivers traveling in excess of 40 mph. Comments of CEMA at 5.

^{8/} Comments of CD Radio at 4 (*emphasis added*).

^{9/} *Id.*

While both licensees acknowledge the indispensability of gap-fillers, it is abundantly clear from its comments that CD Radio (and presumably AMRC) has every economic incentive to restrict its deployment of terrestrial gap-fillers to the absolute minimum.^{10/} Given that the rapid and widespread deployment of terrestrial gap-fillers has been shown by the CEMA field tests and the CRC Report to be essential to the provision of viable, seamless, nationwide DARS service, the Commission should exercise reasonable steps to ensure that the licensees' short-term economic incentives and their reluctance to build the necessary gap-fillers does not result in the warehousing of valuable spectrum and undermine the provision of acceptable DARS service, either on a nationwide basis or to mobile and urban receivers.

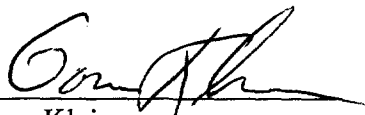
^{10/} Recent press reports detail a filing by Primosphere with the FCC seeking denial of the issuance of licenses to AMRC and CD Radio. These reports indicate that AMRC is experiencing serious financial distress. Accordingly, it appears likely that AMRC also will be unwilling to assume any costs not directly related to short-term profitability. *See Communications Daily* (June 25, 1997).

CONCLUSION

CEMA's Comments, the CRC Report and the comments of the licensees confirm: (i) the critical importance of gap-fillers to the provision of a viable DARS service, (ii) the necessity for widespread deployment of these terrestrial gap-fillers, and (iii) the economic incentives of DARS licensees to overlook quality and coverage issues in order to keep gap-filler deployment to the absolute minimum and maximize profitability. As a result, CEMA strongly urges the Commission to adopt quality and performance specifications for satellite DARS systems -- including build-out requirements for terrestrial gap-fillers and reasonable coverage requirements in mobile and urban areas -- so as to ensure that the public benefits from a nationwide, seamless CD-quality DARS service.

Respectfully submitted,

**The Consumers Electronics
Manufacturers Association**

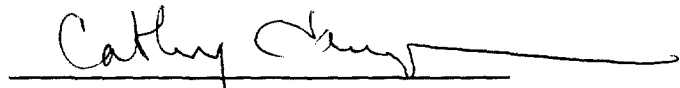
By: 
Gary Klein
Michael Petricone
Ralph Justus
George Hanover
2500 Wilson Boulevard
Arlington, Virginia 22201
(703) 907-7677 (tel)
(703) 907-7693 (fax)

Catherine Wang
William B. Wilhelm, Jr.
Swidler & Berlin, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (tel)
(202) 424-7645 (fax)

Dated: June 27, 1997

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of June, 1997, copies of the foregoing Petition for Reconsideration of the Consumer Electronics Manufacturers Association were delivered via courier or sent First-Class Mail, U.S. postage prepaid, to the persons on the attached list.

A handwritten signature in cursive script, appearing to read "Cathy Sampson", is written over a horizontal line. The signature is fluid and extends to the right of the line.

Cathy Sampson

* Dan Stanks
Federal Communications Commission
Office of Engineering & Technology Labs
7435 Oakland Mills Road
Columbia, Maryland 21046

* Richard E. Wiley, Esq.
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

* Diane Hinson, Esq.
Morrison & Forester
2000 Pennsylvania Ave., Suite 5500
Washington, D.C. 20006

* Lon Levin, Vice President
American Mobile Radio Corp.
10802 Parkridge Boulevard
Reston, Virginia 20191

* Charles T. Morgan, Sr. Vice President
Susquehanna Radio Corp.
140 East Market Street Corp.
York, Pennsylvania 17401

* Robert B. Jacobi
Cohn and Marks
1333 New Hampshire Avenue, N.W. #600
Washington, D.C. 20036-1573

* M. Scott Johnson, Esq.
Anne M. Stamper, Esq.
Gardner, Carton & Douglas
1301 K Street, N.W., East Tower #900
Washington, D.C. 20005

* Henry L. Baumann
Valerie Schulte
National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036

Robert Briskman, President
Satellite CD Radio
1001 22nd Street, N.W., 6th Floor
Washington, D.C. 20037

Rudolfo Baca
Federal Communications Commission
1919 M Street, Room 802
Washington, D.C. 20554

Rosalee Chiara
Federal Communications Commission
2000 M Street, Room 516
Washington, D.C. 20554

Richard Engelman
Federal Communications Commission
2000 M Street, Room 230
Washington, D.C. 20554

Julius Genachowski
Federal Communications Commission
1919 M Street, Room 814
Washington, D.C. 20554

Don Gips
Federal Communications Commission
2000 M Street, Room 827
Washington, D.C. 20554

Jane Mago
Federal Communications Commission
1919 M Street, Room 844
Washington, D.C. 20554

Ruth Milkman
Federal Communications Commission
2000 M Street, Room 821
Washington, D.C. 20554

Steve Sharkey
Federal Communications Commission
2000 M Street, Room 512
Washington, D.C. 20554

David Siddall
Federal Communications Commission
1919 M Street, Room 832
Washington, D.C. 20554

Richard M. Smith
Federal Communications Commission
2000 M Street, Room 412
Washington, D.C. 20554

Thomas Stanley
Federal Communications Commission
2025 M Street, Room 5002
Washington, D.C. 20554

John Stern
Federal Communications Commission
2000 M Street, Room 819-A
Washington, D.C. 20554

John Williams
Federal Communications Commission
1919 M Street, Room 822
Washington, D.C. 20554

Larry Olson
International Bureau
Federal Communications Commission
2000 M Street, Room 865
Washington, D.C. 20554

Rick Engelman
International Bureau
Federal Communications Commission
2000 M Street, Room 868
Washington, D.C. 20554

John Reiser
International Bureau
Federal Communications Commission
2000 M Street, Room 808
Washington, D.C. 20554

Keith Larson
Mass Media Bureau
Federal Communications Commission
1919 M Street, Room 314
Washington, D.C. 20554

International Transcription Service
1231 20th Street, N.W.
Washington, D.C. 20036

* - via first-class mail